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**FISCAL IMPACT STATEMENT**

**LS 7081**

**BILL NUMBER:** SB 405

**NOTE PREPARED:** Feb 20, 2004

**BILL AMENDED:** Feb 19, 2004

**SUBJECT:** Small Loans.

**FIRST AUTHOR:** Sen. Paul

**FIRST SPONSOR:** Rep. Mahern

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill makes various changes in the small loan provisions of the Uniform Consumer Credit Code, including:

- (1) The bill prohibits the renewal of a small loan.
- (2) The bill removes limitations on finance charges.
- (3) The bill increases delinquency charges.
- (4) The bill allows a small loan to be secured by a borrower's authorization to debit an account instead of a borrower's check.
- (5) The bill increases civil penalties and statutory damages from \$1,000 to \$2,000.
- (6) The bill prohibits a small loan if the total payable amount of the small loan exceeds 15% of the borrower's monthly gross income. (Current law provides that a small loan is prohibited if it exceeds 20% of the borrower's monthly net income.)
- (7) The bill repeals provisions that relate to the renewal of a small loan.

**Effective Date:** (Amended) Upon passage; July 1, 2004.

**Explanation of State Expenditures:** (Revised) *Summary:* Under the bill, the Department of Financial Institutions (DFI) may require additional expenditures to oversee and react to potential fraud on the part of

payday lenders with respect to securing a small loan through the authorization of the debit account of a borrower.

Under current law (P.L. 38-2002), the Department provides written notification of standards for renewing a small loan. The Department would have to revise their notification procedures to account for debit-secured small loans and include the new range of what constitutes a small loan. Under the bill, the range amount of small loans would be revised to not less than \$50 to not more than \$400. (Current law defines a small loan as a payday loan of not less than \$50 and not greater than \$401.)

Additionally, current law (IC 24-4.5-5-202(9)) allows the Department the option to act on behalf of a debtor, in case of a fraudulent loan secured by check. The Department may enforce the debtor's rights against a creditor who is licensed or registered with the Department. Under the bill, the Department would have this option at their disposal with respect to fraudulent loans secured with a debit account.

Under the bill, the Department would be required to monitor the effectiveness of private consumer reporting services that provide compliance information with regard to an individual applying for a small loan.

The bill would allow the Department the specific ability to determine if an Internet entity is advancing "cash rebates" to individuals that are customers of the entity, that do not represent a discount or an adjustment to the price of otherwise purchased products from the entity.

The Department's current resources should be sufficient to incorporate the above changes.

*Background:* The Department is currently pursuing 10 injunctions against certain Internet entities to cease and desist from advancing "cash rebates" as described above.

*Criminal Penalties for Fraud:* Under current law, penalties under IC 35-43-5 are instituted for forgery, fraud, and other deceptions with regard to small loans paid by a check. The bill would add small loans that are made under authorization to debit a borrower's account to this penalty provision. It is possible that widening the scope of what is covered under current fraud criminal penalties could result in more individuals charged with fraud.

A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** (Revised) *Summary:* The bill would allow the expansion of several civil penalties currently imposed by the DFI for small loan fraud, where the loan is secured by means of a borrower's debit account. Depending on the circumstances and current law, existing penalties can range from not more than \$500, not more than \$1,000, to not more than \$15,000.

Additionally, the bill would increase existing statutory civil penalties from \$1,000 to \$2,000, for any violation under IC 24-4.5-7 (small loans chapter of the Uniform Consumer Credit Code.)

Payday lenders are considered licensed lenders for purpose of regulation. In FY 2003, the DFI collected

\$804,802 in licensed lender fees. In FY 2002 collections amounted to \$475,321. Licensed lender fees are deposited in the Financial Institutions Fund.

*Criminal Penalties for Fraud:* Under the bill, several criminal violations for fraud involving small loans would apply to debit account-secured loans in addition to check-secured loans under current law. Penalties include: a Class A misdemeanor, and a Class C or D felony depending on the severity of the violation as defined in statute. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony and a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

*Fees for Civil Actions:* This bill may increase the filings of civil actions. The filing fee for civil actions is \$100. Of this fee, 70%, or \$70, is deposited in the state General Fund if the case is filed in a trial court. If a case is filed in a city or town court (providing that the court has jurisdiction), the state General Fund receives 55% of the \$100 filing fee.

*Background:* The Department currently reports the existence of 44 separate payday lenders with 313 Indiana branches.

In 2002, the Department reported 105 payday lenders in existence with approximately 560 branches in operation in Indiana.

**Explanation of Local Expenditures:** *Criminal Penalties for Fraud:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** *Criminal Penalties for Fraud:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

*Class A misdemeanor:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

*Fees for Civil Actions:* If a case is filed in a trial court, the county general fund receives 27%, or \$27, of the \$100 filing fee. Also, 3%, or \$3, is deposited in the general fund of the cities and towns maintaining a law

enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county, or municipal court located in the county. If the case is filed in a city or town court (providing the court has jurisdiction), the county general fund receives 20% while the city or town general fund receives 25%.

**State Agencies Affected:** Department of Financial Institutions; Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement.

**Information Sources:** Phil Goddard, Department of Financial Institutions; *Indiana Handbook of Taxes, Revenues, and Appropriations*, FY 2003; Office of the State Auditor Revenue Trial Balance, June 30, 2003.

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